

December 3, 2005

Mr. David Lochbaum
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, DC 20006

Dear Mr. Lochbaum:

This letter responds to the petition you filed with Mr. Luis A. Reyes, Executive Director for Operations for the Nuclear Regulatory Commission (NRC or Commission) on April 12, 2005, related to the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and 2) license renewal application. In your petition, you requested that the NRC either (1) take enforcement action against FirstEnergy Nuclear Operating Company (FENOC or the licensee) and impose a civil penalty of at least \$55,000 or (2) move the license renewal application for BVPS-1 and 2 to the end of the current review queue.

As a basis for the requests, you cited NRC news release 05-052, dated March 24, 2005, which stated that NRC returned the February 9, 2005, license renewal application submitted by FirstEnergy Nuclear Operating Company. You further quoted a statement made by David Matthews, Director of the Division of Regulatory Improvement Programs at NRC as supporting your basis:

The NRC's primary mission is ensuring protection of public health and safety, and we cannot do that for an additional 20 years of Beaver Valley operation unless we have complete, accurate, and up-to-date information on the plant. Given the gaps in the current application, we simply could not properly review FirstEnergy's request.

You stated that the licensee's February 9, 2005, submittal was not complete and accurate and that this is a violation of Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.9(a), which requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects. You stated as a basis for the alternative sanction of moving the license renewal application that moving the application to the end of the current queue would allow time for the licensee to ensure the resubmittal is complete and accurate. It would also allow the NRC to review the application without requiring additional resources to recheck the resubmittal concurrent with other license renewal reviews, which you stated could compromise the quality of the NRC review.

By letter dated May 20, 2005, the NRC stated that the staff would not treat the alternative sanction you requested under the 10 CFR 2.206 process because it did not fit the guidelines for consideration pursuant to 10 CFR 2.206. However, the NRC stated that your request for enforcement action did fit those guidelines and was being considered as a petition pursuant to 10 CFR 2.206.

You were offered an opportunity to discuss your petition with the Petition Review Board but declined and indicated that all of the relevant information was contained in your petition.

The NRC staff did not solicit additional information from the licensee in completing its review of your petition, but noted that the licensee's letter dated April 19, 2005, responded to the NRC staff's letter of March 24, 2005, which informed the licensee that its February 9, 2005, application contained deficiencies and could not be accepted for docketing and review. In its letter of April 19, 2005, the licensee indicated that it would take corrective action to address the deficiencies contained in its license renewal application. In a public meeting on July 22, 2005, the licensee provided the results of its root-cause investigation of the failure to properly validate the information contained in its license renewal application and its plans to revalidate the license renewal application's technical supporting information. In a letter dated August 11, 2005, the licensee described its plans for correcting the deficiencies in its license renewal application in order to support a resubmission of the application by the end of the first quarter of 2007.

By letter dated September 15, 2005, the NRC staff sent a copy of the proposed Director's Decision to you and the licensee for comment. The staff received no comments on the proposed Director's Decision.

The final Director's Decision addresses two items related to whether enforcement action should be taken against the licensee regarding its license renewal application. The first is whether a violation of NRC regulations occurred, and the second is whether enforcement action including issuance of a civil penalty of \$55,000 is appropriate, as requested in your petition.

With respect to the first issue, the NRC staff concluded that a violation of 10 CFR 54.13 did occur rather than a violation of 10 CFR 50.9, as stated in your petition. For the requirement to provide complete and accurate information, 10 CFR 54.13 applies to license renewal applications rather than 10 CFR 50.9.

Both 10 CFR 50.9 and 10 CFR 54.13 require, in part, that all information submitted to the NRC by a licensee be complete and accurate in all material respects. These requirements apply to the licensing process. As such, licensee submittals are required to be complete with regard to descriptions of scope and impact, and accurate with regard to factual content. During the licensing process, it is typical for the NRC to request additional information to support its review of a licensing action (e.g., amendment request) and at times the NRC does not agree with conclusions proposed by licensees. It is important to note that neither NRC requests for additional levels of detail to support its review or a disagreement with a licensee position would be considered violations within the context of 10 CFR 50.9 and 10 CFR 54.13.

Regarding the second issue, the NRC staff determined that the violation was minor. Pursuant to Section 3.9 of the NRC Enforcement Manual, the NRC did not document its identification of this minor violation in an inspection report. However, in its April 19, 2005, letter, the licensee acknowledged its deficiency in failing to provide a complete license renewal application, and the staff has verified that the licensee has entered the deficiencies leading to the failure to properly validate information in its corrective action program and has completed immediate corrective actions with long-term corrective actions in progress. Pursuant to Section 3.9 of the NRC Enforcement Manual and the NRC Enforcement Policy, Sections IV.B, VI.A-B, and Supplement VII.E, the NRC did not cite this minor violation and did not propose a civil penalty. Consequently, the NRC denies the request that enforcement action be taken.

A copy of the Director's Decision (DD-05-06) will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the DD within that time. The documents cited in the enclosed decision are available at the Commission's Public Document Room, at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

I have also enclosed a copy of the notice of "Issuance of Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the Federal Register for publication.

Please feel free to contact Timothy G. Colburn, Petition Manager, at 301-415-1402 to discuss any questions related to this petition.

Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Docket Nos. 50-334 and 50-412

Enclosures: 1. Director's Decision 05-
2. *Federal Register* Notice

cc w/encls: See next page

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CONCERNING 10 CFR 2.206 PETITION DATED APRIL 12, 2005:

Dated: December 3, 2005

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NRCWEB (Director's Decision only)

Beaver Valley Power Station, Unit Nos. 1 and 2

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